

No. 12915

United States
Court of Appeals
for the Ninth Circuit.

J. J. O'LEARY, Deputy Commissioner, Fourteenth
Compensation District, Under the Longshore-
men's & Harbor Workers' Compensation Act,

Appellant,

vs.

COASTAL NAVIGATION COMPANY, a Corpo-
ration; FIREMAN'S FUND INSURANCE
COMPANY, a Corporation; and MRS. GEN-
EVIEVE LONG,

Appellees.

Transcript of Record

Appeal from the United States District Court,
Western District of Washington,
Northern Division.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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JOHN E. BELCHER,

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BOGLE, BOGLE & GATES, and

EDWARD S. FRANKLIN,

Attorneys for Appellee,

603 Central Building,
Seattle 4, Washington.

BASSETT & GEISNESS, and

J. DUANE VANCE,

Attorney for Intervenor Mrs. Genevieve
Long,

811 New World Life Building,
Seattle 4, Washington.

In the United States District Court for the Western
District of Washington, Northern Division

No. 2585

COASTAL NAVIGATION COMPANY, a Corpo-
ration and FIREMAN'S FUND INSUR-
ANCE COMPANY, a Corporation,

Plaintiffs,

vs.

J. J. O'LEARY, Deputy Commissioner Fourteenth
Compensation District Under the Longshore-
men's and Harbor Workers' Compensation
Act,

Defendant.

PETITION FOR INJUNCTION

Come now the plaintiffs, and for cause of action
against the defendant allege:

I.

That plaintiff Coastal Navigation Company dur-
ing all times material to this petition, was a corpo-
ration organized under the laws of the Territory of
Alaska and engaged in the business of operating
steamships.

II.

That plaintiff, Fireman's Fund Insurance Com-
pany, is now and at all times hereinafter mentioned,
was an insurance company organized as a corpora-
tion under and by virtue of the laws of the State of
California, and was the insurance carrier secured by

the plaintiff Coastal Navigation Co. in accordance with the terms and provisions of the Longshoremen and Harbor Workers' Compensation Act. (33 U.S.C.A. § 901 et seq.)

III.

That defendant J. J. O'Leary is the duly acting and appointed Deputy Commissioner of the United States Employees Compensation Commission for the Fourteenth Compensation District, administering the Longshoremen and Harbor Workers' Compensation Act.

IV.

That on May 7, 1942, one Frank Long, Chief Engineer and a member of the crew of the SS "Coastal Glacier," owned and operated by plaintiff Coastal Navigation Company, died at the Seattle Marine Hospital; that thereafter on December 2, 1949, Mrs. Genevieve Long, surviving widow of decedent Frank Long filed a claim for compensation under the Longshoremen and Harbor Workers' Compensation Act, alleging the death of her husband was due to an injury sustained by him while in the employ of Coastal Navigation Company at Houghton, Washington, May 2, 1948.

V.

That plaintiffs controverted said claim, denying decedent met with any injury in the course of his employment resulting in his death or that he was subject to the provisions of the Longshoremen and Harbor Workers' Act for the reason that the de-

cedent Long was a member of the crew of the SS "Coastal Glacier" at the time of the alleged accident, and crew members are exempted from the coverage of the Longshoremen and Harbor Workers' Act by (33 U.S.C.A., §3) of said Act.

VI.

That a hearing was had on the claim of the widow before defendant J. J. O'Leary as Deputy Commissioner, and on June 16, 1950, the said defendant erroneously and illegally filed an order determining that the said decedent was subject to the provisions of the Longshoremen and Harbor Workers' Act and had sustained a compensable injury on May 2, 1942, while in the employ of plaintiff Coastal Navigation Company, and awarded her death benefits under said act.

VII.

That plaintiffs are presently paying compensation to the widow of the deceased as required by said order.

VIII.

That the said compensation order and award by defendant J. J. O'Leary, filed on June 16, 1950, not being in accordance with law should be suspended and set aside and held for naught.

IX.

That less than thirty (30) days have elapsed since the entry and filing of said compensation order and award of compensation, and the plaintiffs have no relief or adequate remedy at law.

Wherefore, plaintiffs pray for judgment as follows:

(1) That a decree be entered herein adjudging said compensation order and award of June 16, 1950, (attached hereto and made a part hereof as Exhibit "A") to be unlawful and contrary to the provisions of the applicable law, and ordering and directing that the enforcement of said award be permanently enjoined, suspended, and set aside, and that the said defendant Commissioner be required to vacate said order, and file a new compensation order rejecting the claim filed by the claimant Genevieve Long for the reason that her deceased husband at the time of his alleged injury was not subject to the provision of the Longshoremen and Harbor Workers' Compensation Act, or in the alternative, that the said decedent did not die as a result of an injury sustained in the course of his employment.

(2) For such other, further or different relief as to the court may seem equitable and just.

BOGLE, BOGLE & GATES.

State of Washington,
County of King—ss.

Edw. S. Franklin, being first duly sworn on oath deposes and says:

That he is one of the attorneys for the plaintiff in the above-entitled action; that he is authorized to and does make this verification on behalf of the plaintiff; that he has read the foregoing petition for

injunction, knows the contents thereof, and believes the same to be true.

/s/ EDW. S. FRANKLIN.

Subscribed and Sworn to before me this 28th day of June, 1950.

[Seal] /s/ MAX KAMINOFF,
Notary Public in and for the State of Washington,
residing at Seattle.

EXHIBIT "A"

U. S. Department of Labor
Bureau of Employees' Compensation
Fourteenth Compensation District

Case No. 1091-1

In the Matter of:

The Claim for Compensation Under the Longshoremen's and Harbor Workers' Compensation Act.

GENEVIEVE LONG,

Claimant,

FRANCIS L. LONG (Deceased),

vs.

COASTAL NAVIGATION COMPANY,

Employer,

FIREMAN'S FUND INSURANCE COMPANY,
Insurance Carrier.

COMPENSATION ORDER AWARD OF
DEATH BENEFITS

Such investigation in respect to the above-entitled claim having been made as is considered necessary

and a hearing having been duly held in conformity with law, the Deputy Commissioner makes the following

Findings of Fact

That on the 2nd day of May, 1948, the deceased above named was in the employ of the employer above named at Seattle, in the State of Washington, in the Fourteenth Compensation District, established under the provisions of the Longshoremen's and Harbor Workers' Compensation Act, and that the liability of the employer for compensation under the said Act was insured by Fireman's Fund Insurance Company; that the deceased entered the employ of the employer during the latter part of 1946 as Chief Engineer aboard the vessel "Coastal Glacier" at Ketchikan, Alaska; that in March, 1947, after having made one voyage in Alaskan waters the said vessel was brought to Seattle, Washington, and tied up at Ballinger Dock on Lake Washington; that except for the deceased, the crew of the vessel was then discharged, but deceased remained with the vessel in the capacity of caretaker and acted as Chief Engineer whenever the vessel was on a voyage under charter; that his duties consisted of keeping the engines in running order, charging the batteries, general care and maintenance of the vessel and to keep trespassers from boarding the vessel; that during the time the vessel was tied up at Ballinger Dock it was kept in readiness to sail on one day's notice and was on several occasions engaged under charter for fishing trips and for other purposes; that the last trip made by the vessel prior to May 2, 1948, was during September, 1947, and that sub-

sequent to that time the vessel remained tied up at Ballinger Dock; that the deceased lived aboard the vessel, prepared his own meals and was furnished subsistence by the employer; that on May 2, 1948, while the deceased was decending the stairway leading to the engine room he slipped and fell, in consequence of which he suffered a right strangulated hernia; that the deceased was admitted to the U. S. Marine Hospital on May 4, 1948, and died in said hospital on May 7, 1948, following an operation for the repair of the strangulated hernia; that written notice of death was not given within thirty days but that the employer had knowledge of the death and has not been prejudiced by the lack of such written notice; that a claim for death benefits was filed in the office of the Deputy Commissioner on December 12, 1949, which was more than one year after the death of the deceased and objection to such failure was made at the first hearing of the claim in which all parties in interest were given reasonable notice and opportunity to be heard; that the employer failed to file a report of injury and death of the deceased in accordance with the provisions of Section 30 (a) of the Longshoremen's and Harbor the time limitation for the filing of a claim for death benefits did not run against said claim and that the claim for death benefits was timely filed; that at the time of his injury the deceased was performing service for the employer in his capacity as a caretaker of the vessel "Coastal Glacier" and not as a member of the crew of said vessel; that the in-Workers' Compensation Act and in accordance with the provisions of Subdivision (f) of said Section

jury and death of the deceased arose out of and in the course of his employment by the employer above named; that the average annual earnings of the deceased at the time of his injury amounted to \$3000.00; that Genevieve Long, who was born on May 16, 1895, and married to the deceased on April 26, 1915, is the surviving wife of the deceased and as such is entitled to death benefits for her support at the rate of \$13.13 per week; that the accrued death benefits from May 7, 1948, to June 15, 1950, inclusive, amount to \$1444.30; that funeral expenses in the amount of \$725.88 were paid by the claimant, Genevieve Long, and she is entitled to reimbursement for funeral expenses in the amount of \$200.00.

Upon the foregoing facts the Deputy Commissioner makes the following

Award

That the employer, Coastal Navigation Company, and the insurance carrier, Fireman's Fund Insurance Company, shall pay to Genevieve Long as surviving wife of the deceased, death benefits as follows: 110 weeks at \$13.13 per week from May 7, 1948, to June 15, 1950, inclusive, in the amount of \$1444.30, which the employer and insurance carrier are directed to pay forthwith in one sum (Less Attorneys' fee hereinafter provided for) and shall continue payments thereof in bi-weekly installments at the rate of \$13.13 per week subject to the limitations of the Act or until otherwise ordered. The employer and carrier shall also pay to Genevieve Long the sum of \$200.00 as funeral expenses of the deceased employee.

A fee in the amount of \$100.00 is hereby approved in favor of Attorneys Bassett & Geisness, New World Life Building, 2nd and Cherry, Seattle 4, Washington, for services rendered the claimant in connection with the presentation of her claim, the same to be a lien on and deducted from payment of this award.

Given under my hand at Seattle, Washington, this 16th day of June, 1950.

/s/ J. J. O'LEARY,

Deputy Commissioner, Fourteenth Compensation District.

Proof of Service

I hereby certify that a copy of the foregoing compensation order was sent by registered mail to the claimant, the employer and the insurance carrier, at the last known address of each as follows:

Mrs. Genevieve Long, Coastal Navigation Company, Park Rapids, Minnesota, c/o Alaska Transportation Co., Pier 51, Seattle, Wash.

Fireman's Fund Insurance Company; c/o Bogle, Bogle & Gates, Central Bldg., Seattle, Wash.

Regular Mail

Bassett & Geisness, Attys., New World Life Bldg., 2nd & Cherry, Seattle 4, Wash.

/s/ J. J. O'LEARY,

Deputy Commissioner.

Mailed: June 16, 1950.

[Endorsed]: Filed June 28, 1950.

[Title of District Court and Cause.]

APPEARANCE

To Plaintiffs Above Named, and to Bogle, Bogle & Gates, Attorneys for Plaintiffs:

You, and Each of You, will hereby please take notice that J. Charles Dennis, United States Attorney for the Western District of Washington, hereby enters his appearance as attorney for the defendant, J. J. O'Leary, Deputy Commissioner, Fourteenth Compensation District, and you will please serve all notices, pleadings and papers in connection with said cause upon him at his address stated below.

/s/ J. CHARLES DENNIS,
United States Attorney.

Receipt of copy acknowledged.

[Endorsed]: Filed July 19, 1950.

[Title of District Court and Cause.]

DEFENDANT O'LEARY'S MOTION TO DISMISS PETITION

Comes now defendant, J. J. O'Leary, deputy commissioner, Bureau of Employees' Compensation, Department of Labor, by his attorneys and moves this Honorable Court to dismiss the petition for injunction filed herein for the following reasons:

1. That the petition does not state a cause of action and does not entitle plaintiffs to any relief,

nor does such petition state a claim against defendant upon which relief can be granted.

2. That it appears from the petition, including the transcript of testimony taken before the deputy commissioner on April 27, 1950, the exhibits, and the compensation order of June 16, 1950, complained of, that the employee's death in this case arose out of and in the course of his employment, and that the deceased employee was not a member of a crew of any vessel.

3. That it appears from the petition that the compensation order complained of is in all respects in accordance with law.

4. For such other good and sufficient reason as may be shown.

/s/ J. CHARLES DENNIS,

United States Attorney, Attorney for Deputy Commissioner O'Leary.

[Endorsed]: Filed October 11, 1950.

[Title of District Court and Cause.]

MOTION OF UNITED STATES TO DISMISS

To the Clerk of the United States District Court:

Please place the Motion of the United States to dismiss plaintiff's complaint on the motion calendar for January 8, 1951.

BOGLE, BOGLE & GATES,
Attorneys for Plaintiff.

Receipt of copy acknowledged.

[Endorsed]: Filed December 21, 1950.

In the United States District Court for the Western
District of Washington, Northern Division

No. 2585

COASTAL NAVIGATION COMPANY, a Corpo-
ration, and FIREMAN'S FUND INSUR-
ANCE COMPANY, a Corporation,

Plaintiffs,

vs.

J. J. O'LEARY, Deputy Commissioner Fourteenth
Compensation District Under the Longshore-
men's and Harbor Workers' Compensation Act,
Defendant.

MEMORANDUM AND ORDER

Plaintiffs seek herein a decree setting aside a compensation order made by the Deputy Commissioner for the Fourteenth Compensation District under the Longshoremen and Harbor Workers' Compensation Act (33 U.S.C.A. 901, et seq.) awarding to Mrs. Genevieve Long death benefits due to the death of her husband Frank Long resulting from injuries claimed to have been sustained by him while in the employ of plaintiff, Coastal Navigation Company. Plaintiff, Fireman's Fund Insurance Company, was the insurance carrier for Coastal in accordance with the provisions of that Act. The first objection to the order raises the question whether Long was a "member of a crew" and therefore excluded from the provisions of the Act. Section 903(a)(1). A second objection to the order is based

upon a claimed want of evidence to sustain the finding that Long was injured while in the ship's service.

The decedent Long was a seagoing man, an engineer of years standing. The Coastal Navigation Company had purchased two vessels, the Coastal Glacier and Coastal Forest, and at the time of the purchase contemplated their use in their Alaska run. Each used a complement of nine or ten men. They were taken to task by the Union which demanded some twelve or thirteen in the crew of each vessel. The company decided that the cost of operation was too great with this added operating cost, so, in March, 1947, removed the vessels from Ketchikan, Alaska, to Seattle, Washington, where they were moored at a pier landing at Kirkland on Lake Washington. All of the crews of both vessels were discharged except Long. He was the Chief Engineer on the Coastal Glacier and he was retained in that capacity. He lived on one of the vessels and as custodian had the duty of keeping both clean, trespassers away, etc. His main duty was to keep watch. He also was to oil the machinery and keep the vessels in mechanical condition so that the vessels would be ready for use by charter or otherwise on a day's notice. The Coastal Glacier sailed on short trips on a few occasions and when it did Long went along as the engineer.

One Haas, who was not a seagoing man, first talked with Long about taking Long's place while Long would be away in Minnesota on a contemplated trip to that state. Long was then to see the

agent of the company about employing Haas. Haas came back to the pier a few days later and found Long stretched out on his bunk in the Coastal Glacier. Long told him he had slipped and fallen while going down into the engine room. Long died from a bilateral hernia with strangulation.

Haas, after the injury and death of Long, stayed on as the watchman and caretaker of the ships. He likewise lived on one of them, although he was not paid subsistence. After Long's death a Mr. Nilsen was employed to turn over the engines and keep them in good working order, and this he does once a month. The vessels are diesel engine powered and required a diesel man to operate and Long was a diesel engineer. Haas was neither a diesel engineer nor a marine engineer. Although the evidence is obscure upon the point it is to be inferred that the operation of the generators, a daily duty of Long, was performed by Haas after he took charge.

This court is not empowered to weigh or appraise the evidence before the Deputy Commissioner. If there is evidence to support the order the award must be given effect. *South Chicago Coal & Dock Co.*, 309 U. S. 251. The power to suspend or set aside a compensation order exists only if the order is "not in accordance with law." Section 21(b) of the Act. If, and only if, the award is founded upon an error in law, such as the misconstruction of a term of the Act, may it be set aside. *Norton v. Warner Co.*, 321 U. S. 565.

Long was permanently attached to the vessel. He lodged there and he was provided subsistence

aboard. He was paid monthly. These are characteristics of employment of crew members. The Coastal Glacier was kept in condition to sail promptly. The owner was endeavoring to obtain satisfactory charters for her and, had she been chartered, a condition of chartering would have been that Long go aboard as engineer. All of the duties performed by Long as detailed above were maritime in character.

The Act in question provides compensation for a class of workers whose work is maritime in nature and therefore not constitutionally compensable under state law. The exception of master and members of a crew was inserted at the insistence of seagoing men who preferred the existing protection of maritime law, including maintenance and cure, the remedy for injuries in the course of employment under the Jones Act, and the remedy in admiralty for injuries resulting from unseaworthiness. The remedy under the Act is exclusive. It was designed to provide compensation "in the stead of liability for a class of employees commonly known as Longshoremen. These men are mainly employed in loading, unloading, refitting and repairing ships." Senate Report No. 973, 69th Cong. 1st Sess., p. 16. Long's work can not be said to fit into that category. The worker's status is determined by his duties. If his work is that "of laborers, of the sort performed by longshoremen and harbor workers and thus distinguished from those employees on the vessel who are naturally and primarily on board to aid in her navigation," he comes within the benefit of the Act. *South Chicago Co. v. Bassett*, 309 U. S. 251, 260.

Point is made of the fact that the evidence supports a finding that Long's main duty was to guard the boat from trespassers and any other possible sources of danger. Traditionally this is a work performed by the crew. It is rendered none the less work of a crew because sometimes, or often, private patrol agencies are engaged to perform guard duty while ships are in port. Though the benefits under the Act may inure to harbor workers who are neither longshoremen, repairmen nor engaged in refitting but who are temporarily on board to render services while the ship is in port, it does not follow that a member of the ship's company who remains on board in port ceases to be a member of the crew by devoting a major part of his time while in port to guard duty. Long's work was in furtherance of the trade in which the ship was engaged and was essential to the successful and continuing operation of the ship. Navigation is not limited to "putting over the helm." Norton case, *supra*, page 572. He was injured while on his way down into the engine room, presumably in connection with his duty to keep the machinery in condition. Cf. *Doffin v. Pape*, 170 F 2d 622. The ship was being kept in shape for a voyage and therefore was in navigation. *Carumbo v. Cape Cod S.S. Co.*, 123 F 2d 991; *Jones v. Shepherd*, 20 F. Supp. 345; *Carvalho v. Fregata*, 42 F. Supp 404.

We now move to plaintiff's second objection. As before noted, Haas testified that when he found Long upon his bunk upon the boat Long told him that he had slipped and fallen when he went to the

engine room of the Coastal Glacier. He was suffering from a swelling in the right lower abdomen "about as big around as the size of a quart jar lid." The Act provides that a declaration of a deceased employee concerning the injury shall be received in evidence and shall "if corroborated by other evidence" be sufficient to establish the injury. I consider that there is sufficient corroboration. Where an injury occurs at the place of employment it is presumed that the injury has arisen out of and in the course of employment. See annotations in 49 A.L.R. 426 to 436. There was no evidence before the Deputy Commissioner that the injury was sustained other than while Long was performing his duties upon the vessel and it is to be presumed "that the claim comes within the provisions of the Act." Section 920(a). See *Marra Bros. Inc., v. Cardillo*, 154 F 2d 357.

Long's statement as to how he was injured is corroborated by the nature of his injury as described by Haas and the diagnosis and cause of death as disclosed by hospital records. It is common knowledge that a hernia may be and is often caused by a fall. The circumstances that he was found disabled at the place of employment, the disability was a hernia and hernia is often caused by a fall constitute sufficient corroboration. *Associated General Contractors v. Cardillo*, 106 F 2d 327. Whatever tends to make a story substantially more credible or probable corroborates it. *Associated General Contractors v. Cardillo*, 106 F 2d 327. The last mentioned case

cites other cases in which awards have been sustained and where fatal injuries were unwitnessed. It was there contended, as it might be contended here, that the evidence could have supported a finding that the fatal trauma was caused by a boxing bout. The court brushed this aside with the statement that it was not concerned with the relative weight of evidence. The facts in *Marra Bros. v. Cardillo*, 154 F 2d 357, presents an unwitnessed fatal injury. An award to the widow was sustained. Likewise there it was contended that the deceased might have met his death by foul play. The court disposed of this argument with a ruling to the effect that the known facts cast the burden upon the plaintiffs to prove that the death did not arise out of or in the course of employment. In *Salmon Bay Sand & Gravel Co. v. Marshall*, 93 F 2d 1 (9th Cir.), an award to the widow was sustained upon inference of death drawn from the fact that deceased disappeared during a voyage of a vessel upon which he was employed.

These cases are in accord with the rule of liberal construction in favor of the injured employee or his dependents in proceedings under the Act. *Baltimore v. Philadelphia Steamboat Co. v. Norton*, 284 U. S. 408.

The permissible inference of in-service injury from the fact that the employee was found with an injury at the place of employment is sufficient to sustain the challenged finding. It is also sufficient corroboration of the hearsay statement.

Having concluded that Long's employment was

within the exception the motion to dismiss should be and is denied.

Dated: January 30th, 1951.

/s/ DAL M. LEMMON,

United States District Judge.

[Endorsed]: Filed and entered January 30, 1951.

[Title of District Court and Cause.]

MOTION TO INTERVENE

Comes now Genevieve Long and moves the court for an order permitting her to intervene as an additional party defendant in the above-entitled action.

The grounds for this motion are:

(1) The movant is the surviving spouse of Francis L. Long, deceased, and the beneficiary of any award made or to be made under the Longshoremen's and Harbor Workers' Compensation Act, and in fact has received some benefits by virtue of the award heretofore made herein by the Deputy Commissioner of the Fourteenth Compensation District and will be deprived of any further compensation if the plaintiff's petition herein be granted.

This motion is accompanied by an answer to the petition herein.

/s/ J. DUANE VANCE,

BASSETT & GEISNESS,

Attorneys for Genevieve
Long.

Receipt of copy acknowledged.

[Endorsed]: Filed February 6, 1951.

[Title of District Court and Cause.]

NOTICE OF HEARING

To the Plaintiffs Above Named and to Bogle, Bogle
and Gates, Their Attorneys:

To the Defendant Above Named and to J. Charles
Dennis, U. S. District Attorney, His Attorney:

To the Clerk of the Above-Entitled Court:

Notice is hereby given that on Monday, the 12th
day of February, 1951, at the hour of 10:00 a.m.,
intervenor will bring on for hearing her motion to
intervene and motion to remand for the taking of
additional testimony.

/s/ J. DUANE VANCE,
BASSETT & GEISNESS,
Attorneys for Intervenor.

Receipt of copy acknowledged.

[Endorsed]: Filed February 6, 1951.

In the United States District Court for the Western
District of Washington, Northern Division

No. 2585

COASTAL NAVIGATION COMPANY, a Cor-
poration, and FIREMAN'S FUND INSUR-
ANCE COMPANY, a Corporation,

Plaintiffs,

vs.

J. J. O'LEARY, Deputy Commissioner Fourteenth
Compensation District, Under the Longshore-
men's and Harbor Workers' Compensation Act,
Defendant.

ORDER GRANTING LEAVE TO INTERVENE

This matter having come duly and regularly be-
fore the Court upon the motion of Genevieve Long
to intervene in the above-entitled cause as an addi-
tional party defendant, all parties being represented
by their respective counsel, and the Court having
considered the files and records herein and the
statements of counsel, now, therefore, it is

Ordered, Adjudged and Decreed that the motion
of Genevieve Long to intervene herein as an addi-
tional party defendant be and it is hereby granted.

Done in Open Court this 6th day of February,
1951.

/s/ DAL M. LEMMON,

U. S. District Judge.

Presented by:

/s/ J. DUANE VANCE,

Of Counsel for Intervenor,

Approved as to Form:

BOGLE, BOGLE & GATES.

[Endorsed]: Filed February 6, 1951.

[Title of District Court and Cause.]

ANSWER OF INTERVENOR TO PETITION
FOR INJUNCTION

Answering the petition for injunction herein the intervenor admits, denies and alleges as follows:

I.

Answering paragraphs I, II, III, V, VII, and IX of said petition intervenor admits the same.

II.

Answering paragraph IV of said petition intervenor admits all of said paragraph save and except the allegation that one Frank Long was chief engineer and a member of the crew of the SS. Coastal Glacier.

III.

Answering paragraph VI intervenor admits that J. J. O'Leary made the order therein mentioned, but denies that said order was erroneous or illegal.

IV.

Answering paragraph VIII of said petition the intervenor denies the same.

By way of further answer to said petition intervenor alleges:

I.

That the decedent Francis L. Long was at the time of the sustaining of the injury from which he died not a member of the crew of the SS. Coastal Glacier but was in truth and fact a watchman and was designated as such on the payroll records of the Coastal Navigation Company, his employer.

Wherefore, having fully answered, the intervenor prays that the plaintiffs' petition herein be dismissed and that the intervenor have and recover here costs herein and that a reasonable sum for the services of her attorneys herein be fixed by the court.

/s/ J. DUANE VANCE,
BASSET & GEISNESS,
Attorneys for Intervenor.

Receipt of copy acknowledged.

[Endorsed]: Filed February 6, 1951.

[Title of District Court and Cause.]

MOTION TO REMAND FOR THE TAKING OF
ADDITIONAL TESTIMONY

Comes now the intervenor herein, Genevieve Long, and moves the Court for an order remanding this cause to the Deputy Commissioner of the Fourteenth Compensation District of the United States Employees' Compensation Commission for the taking of additional testimony.

The testimony sought to be adduced by the in-

tervenor at such hearing is that the Coastal Navigation Company herein, the employer of Francis L. Long at the time of his death carried said decedent on their payroll records as a watchman. Said proof would consist of the introduction of the accounting stub of the payroll check last received by Francis L. Long, a copy of which is attached hereto, and a similar stub for his pay covering the period of February 1 to February 29, 1948, copy of which is also attached hereto.

This motion is based upon the files and records herein and the affidavit of counsel hereto attached.

/s/ J. DUANE VANCE,
BASSETT & GEISNESS,
Attorneys for Intervenor.

(Copy)

Statement of Remittance

No Receipt Necessary

Detach before depositing in Bank

Coastal Navigation Co.—Watchman

Wages 2/1-29/48		250.00
Less Soc. Sec.	2.50	
“ With. Tax	35.50	38.00
		<hr/>
		212.00

Alaska Transportation Company—Pier 58, Seattle
1, Washington.

(Copy)

Statement of Remittance

No Receipt Necessary

Detach before depositing in Bank

Coastal Navigation Co.

Watchman: 4/1-4/30/48		250.00
• Less Soc. Sec.	2.50	
With. Tax	35.50	38.00
		<hr/>
		212.00

Alaska Transportation Company—Pier 58, Seattle
1, Washington.

[Title of District Court and Cause.]

AFFIDAVIT OF J. DUANE VANCE

United States of America,
State of Washington,
County of King—ss.

J. Duane Vance, being first duly sworn, on oath
deposes and says:

That he is one of the attorneys for the intervenor
named herein.

That prior to the hearing before the Deputy Com-
missioner in the above-entitled cause on the 27th
day of April, 1950, and to wit, on the 19th day of
April, 1950, your affiant secured from said Deputy
Commissioner, J. J. O'Leary, a subpoena duces
tecum directed to A. H. Link, Treasurer of the
Coastal Navigation Company, Pier 57, Seattle,
Washington, directing him to appear at said hearing

and to bring with him and produce at said hearing the following books, papers and documents:

“The pilot house log and the engine room log of the vessel Coastal Glacier covering the period from July, 1946, to May 7, 1948, and all time card, payroll records and other documents relative to the employment and pay of Mr. Francis L. Long from July, 1946, until May 7, 1948.”

Your affiant immediately placed said subpoena in the hands of a process server, to wit, Larimore's Legal Process Service, who was unable to serve said Link and reported in writing to your affiant that said Link was “not at this address, dock is locked.” Your affiant thereafter advised counsel for the Fireman's Fund Insurance Company, the carrier herein, Edward S. Franklin, of his inability to locate said Link and serve him with said process, whereupon said Franklin stated that Mr. Link would be present at said hearing and that he would voluntarily produce the books, papers and documents requested in said subpoena.

At the time of the hearing said Link did appear to testify and produced the log books called for in such subpoena, but wholly failed to produce any of the requested time cards, payroll records or other documents and a representation was made to your affiant by either Mr. Link or Mr. Franklin, your affiant not now remembering which, either that said records could not be located or they contained no information pertinent to the issue in this case. Your affiant had no knowledge of what might be contained in the employer's records, but had had said subpoena drawn in the anticipation that said records

would disclose the capacity in which the decedent was employed at the time of his death. Since your affiant had no knowledge of what was contained in said records, your affiant was in no position to either ask for a continuance or to insist upon the production of said records by the Coastal Navigation Company. It was stipulated before the hearing that the intervenor herein Genevieve Long was the surviving spouse of said decedent and the person entitled to compensation, if any, and since she resided in Minnesota and was there at the time of the accident and death herein and had no knowledge of the facts of the case your affiant advised her not to incur the expense of coming to the hearing.

After the award of the Commissioner and the petition for injunction was filed herein your affiant advised the intervenor and requested her instructions on further proceedings. The intervenor required your affiant to state fully the contentions of all parties and upon same having been explained to her she made a thorough search of all of her deceased husband's personal effects and found the two payroll check vouchers attached to the motion herein.

/s/ J. DUANE VANCE.

Subscribed and sworn to before me this 5th day of February, 1951.

[Seal] /s/ JOHN GEISNESS,
Notary Public in and for the State of Washington,
residing at Seattle.

Receipt of Copy acknowledged.

[Endorsed]: Filed February 6, 1951.

In the United States District Court for the Western
District of Washington, Northern Division

No. 2585

COASTAL NAVIGATION COMPANY, a Cor-
poration, and FIREMAN'S FUND INSUR-
ANCE COMPANY, a Corporation,
Plaintiffs,

vs.

J. J. O'LEARY, Deputy Commissioner, Fourteenth
Compensation District, Under the Longshore-
men's & Harbor Workers' Compensation Act,
Defendant.

MEMORANDUM AND ORDER

This action is a proceeding to have it be declared that the compensation order of the Deputy Commissioner is not in accordance with law, to have the same set aside "through injunction proceedings," as provided by Section 921(b) of Title 33 U.S.C.A. It is designed to review the action of an administrative agency. As pointed out in *Bassett v. Massman Const. Co.*, 120 F. 2d 230, "It lacks a cardinal characteristic of ordinary injunction proceedings directed at administrative orders in that there is (except as to jurisdictional issues) no trial de novo of the facts * * *. Also, the reviewing court is acting really as a court in admiralty with the power to grant injunctive relief especially given by this section." Since there has been no trial of issues of fact before this court there is nothing which re-

quires or permits the making of findings of fact herein.

The petition should have been filed on the admiralty side of this court. Twin Harbor Stevedoring Tug Co. v. Marshall, 103 F. 2d 513.

It is Ordered, Adjudged and Decreed that the petition of the plaintiffs for an injunction herein be treated as a libel and the injunction be granted, and defendant J. J. O'Leary, Deputy Commissioner of the Fourteenth Compensation District under the Longshoremen's & Harbor Workers' Act, be, and he is permanently enjoined and restrained from enforcing or attempting to enforce that certain compensation order entered by him on June 16, 1950, awarding death benefits to the decedent Frank L. Long under the terms and provisions of the Longshoremen's & Harbor Workers' Act; and that said order be, and it is vacated, set aside and held for naught.

Dated: February 15, 1951.

/s/ DAL M. LEMMON,

United States District Judge.

[Endorsed]: Filed February 15, 1951.

[Title of District Court and Cause.]

PROPOSED ORDER DENYING MOTION FOR
DISMISSAL AND GRANTING INJUNCTION

This Matter having come on to be heard before the undersigned, one of the Judges of the above-

entitled Court, at Seattle, Washington, on January 8, 1951, upon the motion of the defendant to dismiss the complaint of the plaintiffs for injunction herein; and the plaintiffs being represented by their attorneys, Messrs. Bogle, Bogle & Gates, and defendant J. J. O'Leary as Deputy Commissioner, being represented by the Hon. J. Charles Dennis, United States District Attorney, and the claimant widow, Mrs. Genevieve Long, being represented by her attorney, J. Duane Vance; and the court having listened to the argument of counsel and being fully advised in the premises, and having heretofore entered its Findings of Fact and Conclusions of Law herein; now, therefore,

It is Ordered, Adjudged and Decreed that the defendant's motion to dismiss the complaint of the plaintiffs for injunction herein be denied, for the reason that said decedent Frank L. Long was not subject to the terms and provisions of the Longshoremen's & Harbor Workers' Act at the time of his death on May 7, 1948, but was a member of the crew of the SS "Coastal Glacier" at said time; and,

It Is Further Ordered, Adjudged and Decreed that the petition of the plaintiffs for an injunction herein be granted, and defendant J. J. O'Leary, Deputy Commissioner of the Fourteenth Compensation District under the Longshoremen's & Harbor Workers' Act, be permanently enjoined and restrained from enforcing or attempting to enforce that certain compensation order entered by him on June 16, 1950, awarding death benefits to the decedent Frank L. Long under the terms and pro-

visions of the Longshoremen's & Harbor Workers' Act; and that said order be vacated, set aside and held for naught.

Done in open court this day of February, 1951.

.....,

Judge.

Presented by:

/s/ EDW. S. FRANKLIN,
Attorneys for Plaintiffs.

Approved as to form only.

Notice of Presentation Waived:

/s/ J. CHARLES DENNIS,
U. S. District Attorney.

.....,

Attorney for Claimant, Mrs.
Genevieve Long.

Lodged February 15, 1951.

[Title of District Court and Cause.]

PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter having come on to be heard at Seattle, Washington, on January 8, 1951, before the undersigned, upon the motion of the defendant to dismiss the complaint of the plaintiffs for an injunction; and the plaintiffs being represented by their attorneys, Bogle, Bogle & Gates, and defendant, J. J.

O'Leary, Deputy Commissioner, Fourteenth Compensation District, being represented by the Hon. Charles Dennis, United States District Attorney, and the claimant widow, Genevieve Long, being represented by her attorney, J. Duane Vance; and the court having listened to the argument of counsel and being fully advised in the premises, now enters the following

Findings of Fact

I.

That decedent Frank Long was a sea-going and maritime engineer of many years standing, and joined the vessel "Coastal Glacier" as Chief Engineer in Alaska in 1946 when said vessel was purchased by the Coastal Navigation Company, his employer.

II.

That the Coastal Navigation Company could not operate the "Coastal Glacier" or its sister ship "Coastal Forest" profitably in Alaskan waters, because of union manning demands, so both vessels, with decedent aboard the "Coastal Glacier" as Chief Engineer, sailed to Seattle, Washington, where the vessels were subsequently moored in Lake Washington, awaiting charters.

III.

That all of the crews of both vessels were discharged when the vessels reached Seattle except decedent, who was retained in the capacity of Chief

Engineer aboard the "Coastal Glacier" until his death on May 7, 1948.

IV.

That decedent's main duties were to keep the "Coastal Glacier" in mechanical readiness for anticipated charters, test and keep the machinery of the "Coastal Glacier" in repair, and keep watch on the vessel; that similar duties were also performed by the deceased on the "Coastal Forest."

V.

That on several occasions the deceased served as Chief Engineer on the "Coastal Glacier" when she was involved in short trips about Puget Sound; that the deceased lived aboard the vessel and was paid monthly wages; that the employer, Coastal Navigation Company, required that in any charter it was successful to obtain for the "Coastal Glacier" that decedent should serve aboard the vessel as Chief Engineer.

VI.

That the deceased was permanently attached to the "Coastal Glacier" for navigational purposes and his death occurred while on his way down to the engine room of the "Coastal Glacier" presumably in connection with his duties of keeping the machinery of the vessel ready for navigational purposes.

Done in open court this day of February, 1951.

.....,

Judge.

From the foregoing Findings of Fact, the Court now enters its

Conclusions of Law

I.

That decedent was a member of the crew of the SS "Coastal Glacier" at the time of his death in the engine room of said vessel on May 7, 1948, at Seattle, Washington, and was excluded by the provisions of § 3 (a) (1) from the provisions and benefits of the Longshoremen's & Harbor Workers' Act.

II.

That defendant's motion to dismiss plaintiff's complaint for injunction be denied with prejudice.

III.

That the petition of the plaintiffs for injunction be granted, and defendant J. J. O'Leary, as Deputy Commissioner of the Fourteenth Compensation District under the Longshoremen's & Harbor Workers' Act, be permanently enjoined and restrained from enforcing that certain compensation order entered by him on June 16, 1950, awarding to Mrs. Genevieve Long, surviving widow of decedent Frank Long, death benefits under the Longshoremen's & Harbor Workers' Act, and that said order be vacated, set aside and held for naught.

Done in open Court this day of February, 1951.

.....,
Judge.

Presented by:

/s/ EDW. S. FRANKLIN,
Attorneys for Plaintiffs.

Approved as to form only.

Notice of Presentation waived:

/s/ J. CHARLES DENNIS,
U. S. District Attorney.

.....,
Attorney for Claimant, Mrs.
Genevieve Long.

Lodged February 15, 1951.

[Title of District Court and Cause.]

EXCEPTIONS TO PROPOSED FINDINGS OF
FACT AND CONCLUSION OF LAW AND
DECREE

I.

Intervenor excepts to the conclusion of law and decree on the grounds that same are contrary to law and further excepts to the entry of the proposed decree granting an injunction and vacating the order of the Deputy Commissioner on the grounds that same is premature.

II.

Intervenor excepts to the entry of any findings of fact by the Court on the grounds and for the reason that the Court is empowered only to grant

an injunction on the basis that the compensation order is "not in accordance with law" as provided in Section 921 of Title 33 U.S.C.A.

III.

Intervenor excepts to the proposed findings of fact as to form in the following particulars:

1. Intervenor excepts to proposed finding of fact No. III insofar as the same states "who was retained in the capacity of chief engineer," for the reason that the evidence and the payroll records conclusively show that he was retained in the capacity of watchman.

2. Intervenor excepts to finding of fact No. IV insofar as the same states that the decedent's main duties were to keep the Coastal Glacier in mechanical readiness and to test and keep the machinery of the Coastal Glacier in repair and keep watch on the vessel, for the reason that the evidence was conclusively, and the Court stated in its memorandum opinion at page 2, that Long's "main duty was to keep watch."

3. Intervenor excepts to finding of fact No. VI insofar as the same finds that the deceased was attached to the Coastal Glacier for navigational purposes, on the ground that the evidence was and the Commissioner found that he was attached to the vessel for non-navigational purposes.

IV.

Intervenor excepts to the proposed findings of fact for their failure to include the following:

1. Intervenor excepts to the failure of the Court

to find that the vessel made no trips from September, 1947, until May 2, 1948, and that during that time it remained tied to the dock.

2. Intervenor excepts to the failure of the Court to find that the deceased was carried on the payroll records of the company as a watchman.

3. Intervenor excepts to the failure of the Court to find that at the time of his injury the deceased was performing service for his employer in his capacity as caretaker.

/s/ J. DUANE VANCE,
BASSETT & GEISNESS,
Attorneys for Intervenor.

[Endorsed]: Filed February 15, 1951.

[Title of District Court and Cause.]

NOTICE OF APPEAL

To: Coastal Navigation Company, a Corporation,
and Fireman's Fund Insurance Company, a
Corporation, plaintiffs herein; and to Bogle,
Bogle & Gates, plaintiffs' attorneys; and to
Mrs. Genevieve Long, intervenor, and J. Duane
Vance, her attorney:

Notice is hereby given that the defendant above
named, J. J. O'Leary, Deputy Commissioner, Four-
teenth Compensation District, hereby appeals to the
United States Court of Appeals for the Ninth Cir-
cuit from the Order entered in the above court

January 30, 1951, and the order entered on the 15th day of February, 1951, and each thereof.

/s/ J. CHARLES DENNIS,
United States Attorney.

/s/ JOHN E. BELCHER,
Asst. U. S. Attorney.

Copies mailed.

[Endorsed]: Filed March 23, 1951.

Federal Security Agency, Bureau of Employees'
Compensation, Before J. J. O'Leary, Deputy
Commissioner, Fourteenth Compensation Dis-
trict.

Case No. 1091-1

GENEVIEVE LONG, Widow of Deceased,
Claimant,

vs.

COASTAL NAVIGATION COMPANY,
Employer,

FIREMAN'S FUND INSURANCE COMPANY,
Carrier.

TRANSCRIPT OF TESTIMONY AT HEARING

Pursuant to notice this matter was heard before
J. J. O'Leary, Deputy Commissioner, Federal Se-
curity Agency, Bureau of Employees' Compensa-
tion, Seattle, Washington, on April 27, 1950.

Appearances:

MR. J. DUANE VANCE,
Attorney, Representing the Claimant.

BOGLE, BOGLE & GATES, By
MR. E. S. FRANKLIN,
Attorneys for Employer and Carrier,
Central Bldg., Seattle.

Proceedings

Deputy Commissioner J. J. O'Leary: This hearing is upon the application of Mrs. Genevieve Long, who as surviving wife of Francis L. Long has filed a claim for death benefits in consequence of the death of her husband on May 7, 1948, while he was employed by Coastal Navigation Company, death allegedly having resulted from an injury sustained by the deceased on May 2, 1948, at or near Kirkland, Washington, aboard the vessel "Coastal Glacier." No report of this alleged injury was filed by the employer, and the claim for death benefits was filed in the office of the Deputy Commissioner on December 12, 1949.

Now, Mr. Vance, will you be good enough to state for the record just what is the basis of your claim at this time?

Mr. Vance: The basis of the claim is that Mr. Francis L. Long sustained an injury aboard the "Coastal Glacier" on or about May first or second, 1948, which resulted in his death several days later; that at the time of the injury his employment was in the nature of a harbor worker, bringing him within the purview of the Longshoremen's and Harbor Workers' Compensation Act, and as the result

of said injury and death his surviving spouse, Mrs. Genevieve Long, is entitled to compensation under that Act.

Deputy Commissioner: Mr. Franklin, will you please state the position of the employer and carrier? [2*]

Mr. Franklin: The position of the employer, Coastal Navigation Company, and the carrier, Fireman's Fund Insurance Company, is that the deceased did not die of an injury sustained in the course of his employment on May 2, 1948. It is further denied that both the decedent, Francis L. Long, and his former employer, Coastal Navigation Company, were subject to the Longshoremen's and Harbor Workers' Compensation Act at the time of the alleged injury of the decedent. It is further denied that the claim filed by Mrs. Genevieve Long was filed within the period required by the statute of limitations. It is further alleged by the employer and carrier that at the time of the last illness of the deceased, he was a member of the crew of the S. S. Coastal Glacier and was not under the jurisdiction of the Longshoremen's and Harbor Workers' Compensation Act.

As an alternative defense, employer and carrier assert that the Coastal Glacier was a decommissioned vessel at the time of decedent's death and deceased was subject to the State Workmen's Compensation Act.

Mr. Vance: I will call Miss Krafve. [3]

* Page numbering appearing at top of page of original Reporter's Transcript of Record.

MISS BETTY MARION KRAFVE.

being first duly sworn, testified as follows:

Direct Examination

By Mr. Vance:

Deputy Commissioner: State your full name?

A. Betty Marion Krafve.

Q. (By Mr. Vance): Miss Krafve, what is your occupation?

A. Medical Record Librarian at U. S. Marine Hospital.

Q. And as such do you have custody of the clinical records of the hospital? A. Yes, sir.

Q. You are here in response to a subpoena, requesting you to bring with you the records pertaining to the illness and death of Francis L. Long, are you? A. Yes.

Q. Do you have those records with you?

A. Yes, sir; I have.

Q. Referring to Claimant's Exhibit 1, will you please state what that is?

Mr. Franklin: Employer and carrier will stipulate that the clinical record referred to as Claimant's Exhibit 1 are the records of the U. S. Marine Hospital pertaining to the deceased and may be introduced in evidence.

Deputy Commissioner: The record of the U. S. Marine Hospital is identified as Register No. [4] 51-020, and will be received in evidence and will be marked Claimant's Exhibit 1.

(Testimony of Miss Betty Marion Krafve.)

Cross-Examination

By Mr. Franklin:

Q. Miss Krafve, you are attached to the staff of the U. S. Marine Hospital? A. Yes.

Q. And that is an institution that cares for merchant seamen who become sick and ill?

A. Yes.

Mr. Franklin: That is all, thank you.

(Witness excused.)

Mr. Vance: I will call Mr. Haas. [5]

HARLAN C. HAAS

called as a witness on behalf of the Claimant, being first duly sworn, testified as follows:

Direct Examination

By Mr. Vance:

Mr. O'Leary: State your full name and home address?

A. Harlan C. Haas.

Q. Where do you live?

A. Kirkland, Washington.

Q. (By Mr. Vance.) What is your occupation?

A. I am caretaker for Coastal Navigation Company.

Q. What do you take care of?

A. "Coastal Forest," "Coastal Glacier," and the Yard.

(Testimony of Harlan C. Haas.)

Deputy Commissioner: Those are the vessels, "Coastal Forest" and "Coastal Glacier"?

A. Yes.

Q. (By Mr. Vance): Did you say you also take care of the yard?

A. Yes, sir. Since they bought the Yard, I take care of the Yard.

Q. How old a man are you?

A. I will be sixty in October.

Q. What has been your occupation in the past?

A. I am a painter by trade.

Q. Have you ever gone to sea? [6]

A. No, I have not.

Q. You never served as a member of the crew of a vessel? A. No.

Q. When were you first employed by the Coastal Navigation Company? A. May 4, 1948.

Q. Who hired you?

A. Coastal Navigation Company.

Q. What person hired you? A. Mr. Clapp.

Q. Do you know Mr. Clapp's first name?

A. Norton.

Q. Where did you first interview Mr. Clapp about the job?

A. I saw him first on Thursday. That would be the sixth of May when I first saw Mr. Clapp.

Q. What day of May?

A. Sixth day of May.

Q. I think you stated a minute ago you were hired on the fourth.

A. Mr. Long told me I was to stay there until

(Testimony of Harlan C. Haas.)

Mr. Clapp came and I understood at that time I was hired.

Q. You first talked to Mr. Long about the job?

A. Yes. Mr. Long was planning to go back to Minnesota for a vacation and he told me to come down there on the first but I could not come on the first, so that was on Saturday. [7]

Q. When did you first talk to Mr. Long about the job?

A. About two or three days before the first.

Q. About two or three days before the first of May?

A. Yes.

Q. That was Mr. Frank Long?

A. That was Mr. Frank Long. He asked me at that time if I would take care of the vessel while he was gone and I told him I didn't know anything about it but I would take his place and he said he would speak to the Company about it.

Q. In that interview did Mr. Long tell you what the nature of the duties would be in his absence?

A. No, he did not. He told me he would come down and he would show me what to do.

Q. He told you generally what the job consisted of, did he not?

A. Yes, to keep the boat clean and in charge of electricity.

Q. When did he tell you he planned to go back to Minnesota?

A. He was to leave on the fourth or the third or fourth, I have forgotten now which.

(Testimony of Harlan C. Haas.)

Q. That would have been what day in the week?

A. The fourth was on Tuesday, so that would be Monday or Tuesday, I forget which.

Q. What arrangements did you make with him about coming down to the boat? [8]

A. I was to come down there and he was to teach me what to do.

Q. What day of the week were you going to go down to the boat?

A. I was supposed to be there on Saturday.

Q. What happened? Tell us in your own words.

A. On Saturday the wife and I had to come to Seattle on business. We live in Kirkland and had to come on business. Our business took us longer than we thought it would and I didn't get down on Saturday, which was the first of May, so I didn't get down until Sunday and I went down there about one o'clock and Long was not home, so I went back home and then I went back on Monday about ten o'clock and still didn't find no one there; so there was an old fisherman, who comes out quite often; and he came up about one o'clock, I should judge, and I happened to be home that day on account of the wife being sick, so I was home and I didn't go down to the boat and this old fellow said Mr. Long wanted to see me and I went down to the boat and found him in his cabin and he said he had slipped and got hurt.

Mr. Franklin: The employer and carrier objects to any statements alleged to have been made by the decedent to this or any other witnesses on the

(Testimony of Harlan C. Haas.)

ground that it is incompetent unless supported by corroborating evidence.

Deputy Commissioner: Was anyone present [9] when Mr. Long made that statement?

Witness: No.

Deputy Commissioner: I will sustain the objection.

Mr. Vance: They are corroborated by clinical evidence, Exhibit 1, the statements and history having been given to the hospital by the deceased. I know you have had no opportunity to see the exhibit.

Deputy Commissioner: Subject to corroboration, I will allow the question.

Q. (By Mr. Vance): Tell us what Mr. Long told you at that time.

A. He told me he had slipped and fell.

Q. Did he tell you where that fall had occurred?

A. He said when he went to the engineroom.

Q. The engineroom of what?

A. Coastal Glacier.

Q. And what was his condition at that time?

A. He seemed to be sick and he didn't feel very good.

Q. Where did this take place and where were you at this time?

A. I was in the cabin talking to him and he was in his bunk on the Coastal Glacier.

Q. Just go ahead and tell us what happened then.

A. Well, I went in and he said: "I slipped and hurt myself." [10]

(Testimony of Harlan C. Haas.)

Mr. Franklin: It is understood, Mr. O'Leary, that my objection applies to all this testimony, subject to its corroboration.

Deputy Commissioner: That's correct.

Witness (Continuing): So I says to him: "Frank, we should get a doctor." "No," he says, "Let's wait until tomorrow." "No," I says, "You should get a doctor today. When did you slip?" And he said Sunday and he said, "Do you know of a good doctor?" and I says, "I don't know of any. I am a stranger in town." And he says, "Go and find one" and I tried to find one and I went to the Kirkland Hospital and talked to this here doctor that came down here. I have forgotten his name.

Q. Did you notice Mr. Long's physical condition, anything unusual about him? A. No.

Q. Did you notice any injury that he appeared to have of any kind?

A. No; I didn't, no. I didn't know anything about what was the trouble until the doctor was there.

Q. Did you attempt to do anything for Mr. Long before the doctor arrived?

A. He asked for a glass of milk and I gave him a glass of milk.

Q. And what happened? Was he able to retain the milk? [11]

A. No, hardly any. He throwed it up.

Q. Did you have occasion to look at Mr. Long's stomach? A. Not until the doctor came.

(Testimony of Harlan C. Haas.)

Q. What hapened when the doctor came?

A. The doctor examined him and said, "We have got to take you to the hospital" and I went with the doctor to a 'phone and the doctor called up and found he was subject to the Marine Hospital. Then I went back and took care of Mr. Long until the ambulance came.

Q. Did you have occasion to see Mr. Long in the presence of the doctor? A. Yes, I did.

Q. What was his condition?

A. He was swollen quite large.

Q. Where was the swelling?

A. Right lower abdomen.

Q. What kind of a swelling was it?

A. I can't explain that.

Q. How big?

A. About as big around as the size of a quart jar lid, I would say.

Q. When did you then take over your present duties there?

A. I stayed right there. I never left the boat after that. After he left I stayed on the boat.

Q. Where is it these boats are anchored? [12]

A. Anchored at Kirkland.

Q. At a dock or what?

A. At a dock, yes, sir.

Q. Did the dock have a name?

A. It used to be known as the old Ballinger Dock.

Q. Just briefly describe that dock.

A. It is about 200 feet long and four feet wide.

(Testimony of Harlan C. Haas.)

Q. What facilities are there, in the way of buildings and equipment?

A. A long building on the lot and it is all cement floor.

Q. It is all one building? A. Yes.

Q. And what is that building used for? What is its nature? A. It is used as storage.

Q. Storage of what kind of material? What is stored in it? A. Steel rope and so on.

Mr. Franklin: May I interrupt?

Q. When was that acquired by Coastal Navigation Company?

A. That was not acquired by the Company until September of last year.

Q. September of '49?

A. After Mr. Long passed away.

Q. (By Mr. Vance): At the time of Mr. Long's death, what boats were [13] anchored there?

A. Coastal Forest and Coastal Glacier.

Q. There were no other boats there?

A. No other boats, no, sir.

Q. When you took over there on that day, what duties were you to perform?

A. When I took over there I was just to keep the boats clean. That was my duties. I would say it was his duties, the same as I am now, to keep them clean.

Q. You are referring to both the Coastal Glacier and the Coastal Forest? A. Yes, sir.

Q. What do you mean by keeping them clean?

A. Keeping them swept down and washed up and keeping them clean in general.

(Testimony of Harlan C. Haas.)

Q. Do you have any duties with reference to keeping a watch on the boats to keep trespassers off?

A. Yes, sir. I do. I have orders to keep them off. They are allowed on the dock but not on the boats whatsoever.

Q. Did you have any duties in connection with navigation of the boats? A. No, sir.

Q. You have been there ever since that time, have you? A. I have.

Q. And Mr. Long died, did he, without returning to the [14] boat?

A. He never came back; no.

Q. How long had you known Mr. Long prior to that?

A. I would say maybe two weeks. I would not think much more than that. I was not employed at the time. I used to go down there fishing. We could fish off the dock but not off the boats.

Q. Is that how you became acquainted with him, by going down there fishing? A. That's right.

Q. How are those boats moored to the dock?

A. Tied there with ropes.

Mr. Vance: I think that is all.

Cross-Examination

By Mr. Franklin:

Q. Mr. Haas, do you know what Mr. Long's occupation was?

A. He told me that he was a Chief Engineer.

Q. Do you know how long he had been attached

(Testimony of Harlan C. Haas.)

to the boat or associated with the Coastal Glacier as Chief Engineer before his death?

A. He told me he had been with them for three years.

Q. Did he tell you that he had joined the vessel in Alaska as Chief Engineer?

A. I believe that he did. I wouldn't say for sure because I don't remember. [15]

Q. When you first made his acquaintance, where was he living?

A. He was living on the Coastal Glacier.

Q. What duties as Chief Engineer did Mr. Long perform on the Coastal Glacier to your knowledge from what you saw?

A. I know he run the auxiliaries. He told me he had to run the auxiliaries to keep up the electricity.

Q. What do you mean by running the auxiliaries?

A. An auxiliary is what they charge the electricity for the boats.

Q. How is the Coastal Glacier powered? Diesel power?

A. Yes, sir.

Q. And what other work, mechanical work or engineering work, did Mr. Long perform aboard the vessel to your knowledge?

A. As to that I couldn't say altogether because I was not there all the time. I was only there two or three times, three or four may be.

Q. Did you ever see him operate the generator?

A. No. I never did see him. I never was in the engineroom until I took over.

(Testimony of Harlan C. Haas.)

Q. Did you see him work on the engines of the Coastal Glacier? A. No. I never did.

Q. Do you know whether or not he maintained the engines of the Coastal Glacier and kept them in good running order and [16] good condition?

A. I know they were in good running condition.

Q. You are not a diesel engineer yourself?

A. No, sir.

Q. And you are not a marine engineer?

A. No.

Q. And since Mr. Long's death, who has attended to the engineering and maintenance of the Coastal Glacier? A. John Nitson.

Q. Who is he?

A. He is a chief engineer.

Q. And how frequently does Mr. Nitson visit the Coastal Glacier for the purpose of overhauling and maintaining the Coastal Glacier?

A. He turns over the large engines on there to keep them in working condition about once a month.

Q. Now where did you say the light came from on the Coastal Glacier?

A. They come from batteries.

Q. And from what motors, main or auxiliaries?

A. Auxiliaries.

Q. Do you know what duties Mr. Long had in connection with maintaining the auxiliary motors?

A. Do I know what?

Q. Do you know what work Mr. Long engaged in, in maintaining the auxiliary motors? [17]

A. I know that he had to run them every day.

(Testimony of Harlan C. Haas.)

Q. And in addition to that, you say the generator was run every day?

A. That's right.

Q. Do you know at the time of Mr. Long's death whether the Coastal Glacier was kept up so that she, if she had a charter or trip, she could immediately be put in service?

A. Yes, sir. She was ready to go any time.

Q. Mr. Haas, referring to this conversation—and I am not waiving my objection to competency but only in the event it is held competent—I will ask you if Mr. Long told you where he was going at the time of his alleged accident?

A. He was going to Minnesota.

Q. No. You said that he slipped on a portion of the Coastal Glacier.

A. Oh, yes; he had slipped.

Q. And what stairway had he slipped on?

A. He didn't tell me exactly where he slipped.

Q. Did he tell you whether it was on the vessel or up town some place?

A. He told me he slipped going into the engine-room.

Q. Did he tell you why he was going into the engineroom? A. No, he didn't.

Q. Would you tell us, Mr. Haas, the approximate length of the Coastal Glacier? [18]

A. One hundred fourteen feet.

Q. Could you give us her beam?

A. About thirty feet.

Q. And she is diesel powered?

(Testimony of Harlan C. Haas.)

A. By 2/20 horsepower diesel.

Q. And they require the services of a diesel engineer to operate? A. That's right.

Q. And you said Mr. Long was a diesel engineer? A. Yes.

Q. Since you have been employed on the Coastal Glacier since 1948, has that vessel put to sea for various trips from time to time?

Mr. Vance: I am objecting to that. I think it is immaterial what trips the boat made. I don't think it is definite.

Mr. Franklin: I think it goes into the general picture that the vessel was ready and willing to sail when chartered or was available.

Deputy Commissioner: I think I will allow the question.

A. It was ready to go because it went out in September after I took over.

Q. (By Mr. Franklin): And has gone out since?

A. And has gone out since. [19]

Redirect Examination

By Mr. Vance:

Q. Are your duties confined to the Coastal Glacier? A. Both boats.

Q. And what about Mr. Long's duties?

A. Same thing.

Q. Are there two different things you run, generators and auxiliaries? A. That is all one.

Q. And you run them every day?

A. Run them every day.

(Testimony of Harlan C. Haas.)

Q. What kind of a motor is that?

A. It is a diesel engine; about like on an automobile, self-starter, an electric starter.

Q. How did you learn to operate that?

A. Mr. Norton Clapp showed me how.

Q. And the sole purpose of that is to keep up the electricity?

A. That keeps up the electricity.

Q. Would you say the boat went out in September of 1948? A. Yes, in '48.

Q. When she went out on that occasion did you go with her? A. No, I didn't.

Mr. Vance: I think that is all. [20]

Recross-Examination

By Mr. Franklin:

Just one last question.

Q. Mr. Haas, I believe you testified you did not attempt to maintain or keep the engines in repair like Mr. Long did. A. No.

Mr. Vance: I object to that. There is no evidence to that effect.

Q. (By Mr. Franklin): When Mr. Long was aboard the vessel, who kept the engines in repair?

A. I judged Mr. Long did.

Q. When you took over, it was necessary to employ a chief engineer for that job?

A. Yes.

Q. Because you are not a chief engineer?

A. No, I am not.

(Testimony of Harlan C. Haas.)

Redirect Examination

By Mr. Vance:

Q. What does Mr. Nitson do?

A. He is a chief engineer and does whatever is to be done.

Q. How often?

A. Supposed to be there once a month.

Q. What does he do there?

A. He looks over and checks over all machinery. If I run into trouble he fixes it.

Q. (By Mr. O'Leary): What is your salary by the week or month? [21]

A. By the month \$250.00.

Q. Do you sleep on board the Coastal Glacier?

A. Yes, sir.

(Witness excused.)

ALLEN H. LINK

called as a witness on behalf of the claimant, being first duly sworn, testified as follows:

Deputy Commissioner: State your full name and home address?

A. Allen H. Link; home address is 7208 Interlaaken Drive, Tacoma, Washington.

Direct Examination

By Mr. Vance:

Q. Mr. Link, do you have any relation to the Coastal Navigation Company?

(Testimony of Allen H. Link.)

A. Yes. I am Secretary and Treasurer of the Coastal Navigation Company, and also Director.

Q. And what vessels, if any, do the Coastal Navigation Company own?

A. Coastal Forest and Coastal Glacier.

Q. When were they acquired by the Company?

A. I believe it was early in 1946. That is my recollection.

Q. What kind of vessels are those?

A. They were originally built for war purposes and, as I gathered, they were called FS's. To my knowledge they were [22] two types of FS vessels built in Bellingham for the Army or Navy, I forget which, one 115 feet long and another I believe 140 and they were built specifically for use in Alaska ports and waters. They had a special draft and special build that enabled them to do a good job in Alaskan waters.

Q. When these two vessels, Coastal Glacier and Coastal Forest, were acquired by the Company, what was the intent of the Company as to the use of those vessels?

A. We bought these two vessels at a surplus sale up in Seward and it was our intention to have those vessels augment to some extent our Alaska Transportation Company service to Alaska in that we would be able to haul freight and passengers with these 115 foot vessels into our own and other ports in South Eastern Alaska. So when we purchased them we brought them down to Ketchikan and put them in the yards there and more or less

(Testimony of Allen H. Link.)

reconverted the vessels into combination passenger and freight vessels to put them into this operation of port to port call.

Q. Were they ever used for that purpose?

A. Only the Coastal Glacier. The Coastal Forest was ready but she never made a trip.

Q. How many trips did the Coastal Glacier make? A. Just one.

Q. When?

A. I think it was in '46; along the latter part of '46. [23] I think that is my recollection of it.

Q. Why was it not used after that for that purpose?

A. We had spent a good deal on the vessels, around \$25,000.00, I think it was on each one of the vessels, in reconverting them, setting up our docks and our schedules and that sort of thing, predicated on a crew which was hired not entirely out of Ketchikan but Ketchikan or Juneau or both of them. Our Alaska Transportation agents at that time, Mr. Culbert in Ketchikan and Mr. George in Juneau, hired the crews for both the Forest and the Glacier.

Q. May I interrupt at that point? What was hired in the nature of a crew at that time? What did it consist of?

A. It consisted of a master and chief mate and, I presume, second mate. I can't say as to that. Sailors—I think there were four or five sailors, and

(Testimony of Allen H. Link.)

a cook, assistant, and chief engineer and assistant engineer. I think the total crew at that time consisted on each vessel of somewhere in the vicinity of about nine or ten; that is my recollection, approximately nine or ten. We made this one trip which would be approximately a week's duration and when we got back into our home port one of the Unions decided that our crew complement was definitely too low and that we would have to increase our crew complement, as I recall it, to thirteen, and by figuring out in dollars and cents the requirement they were going to make us comply with and with the additional complement, and [24] I believe there were some additional salaries to be paid, and we felt we could not make the vessel pay for itself on the projected trips and we tied the vessels up and they were tied up outside of Ketchikan, I believe, until somewhere in March of 1947.

Mr. Franklin: Do you want to refresh your recollection by these log books?

A. (Continuing): So we were never able to get any change in the complement of the crew or other arrangements, which they didn't think were satisfactory, so we decided to bring the vessels down to Seattle, which was done in March, 1947, and see whether or not we could do anything along the line of chartering these vessels as yachts or fishing or any other purpose of a charter. So we moved them down and got in touch with an attorney in the Hoge Building, and he owned this Ballinger Dock and we made arrangements with him to tie up our two vessels there.

(Testimony of Allen H. Link.)

Q. (By Mr. Vance): And they have been tied up there until this time? A. Yes, sir.

Q. What happened to the crew that brought the vessels down from Ward Cove?

A. All of the crew of both vessels that brought them down from Ward Cove were discharged in a day or two, or two or three, after the time it took to clean the vessels up and [25] after that Mr. Long, Chief Engineer of the Coastal Glacier, was retained in that capacity from that point on until he passed away. He was the only member of the crew that was retained.

Q. Of both vessels. A. Yes, sir.

Q. Mr. Link, can you tell me approximately how many, if any, trips the Coastal Forest made from March, 1947, until the death of Mr. Long?

A. The Coastal Forest to my knowledge did not make any outside trips at all and when I say "outside" I mean just outside the Lake.

Q. Do you know how many trips, if any, the Coastal Glacier made between March, 1947, and Mr. Long's death?

A. Yes, I think I can tell you that. That was March of '47 that she came down from Ketchikan and she went out in May of '47.

Q. You have some notes there. As we go along maybe you can tell us where she went?

A. There was a scout set-up, and he is one of the officers and I think they were having some kind of a convention here and he took out as I recall it forty or fifty boy scouts taken out on a trip. With-

(Testimony of Allen H. Link.)

out referring to each individual the log will tell the exact time. In August and September, 1947, there was a fishing trip made to Cape Flattery, in that [26] general vicinity.

Q. Cape Flattery is a point just off the Northwest tip of the State here?

A. Yes. June 27, 1947, there was a party taken to the Crew Race, University of Washington Crew Race.

Q. That was just in the Lake?

A. Just in the Lake and in September, 1947, there was a fishing trip made to Campbell River in British Columbia. In August, 1948, it was taken out only for compass adjustment, oil and fuel and minor adjustments to the automatic pilot.

Q. There were no trips between the fishing trip to Campbell River and the time it was taken out for compass adjustment?

A. No. In September '48, it again made a trip to Campbell River.

Q. Now, when this boat went out on these fishing trips, who sailed on her as crew?

A. As far as the crew was concerned—did you say since March '47?

Q. Yes.

A. The trip in May, which was the Boy Scout trip, Mr. Nitson acted as Chief Engineer and we had a cook and helper and he would have some of his friends act as helpers or sailors or whatever you want to call it. There was no actual member of the crew hired to do that other than the cook and chief [27] engineer.

(Testimony of Allen H. Link.)

Q. Mr. Clapp and his friends would act as Master, Mate, and so forth?

A. Yes. Other than the engineer and cook there was no official crew members.

Q. Did Mr. Clapp go on these trips?

A. Yes.

Q. And when he sailed, he sailed as master?

A. Yes, sir.

Q. These fishing trips in August and September 1947, to Cape Flattery and Campbell River, you say Mr. Clapp went on those trips?

A. They were primarily pleasure trips, if that is what you are getting at, yes.

Q. Yes. Mr. Clapp is the principal stockholder?

A. Yes.

Q. Did Mr. Long sail with the boat on those occasions?

A. Mr. Nitson worked on the trip of May '47 and without checking Mr. Long's period, he took some vacations, I believe he was gone, so we hired Mr. Nitson. On the August and September trips Mr. Long was Chief Engineer. Again in June '47, Mr. Nitson was the Chief Engineer on that trip and whether Mr. Long was there I could not tell you, but Mr. Nitson went. In September '47, Mr. Long went.

Q. Mr. Long was custodian of both the vessels, was he not? [28]

A. Yes, sir.

Q. He had the duty of keeping watch and keeping trespassers off?

A. In additon to his duties. His other duties

(Testimony of Allen H. Link.)

are primarily taking care of the boats. We have a cyclone fence all around the property and his major duties are to keep watch.

Q. And to keep the vessels clean?

A. Yes, sir.

Q. And to keep them oiled? A. Yes, sir.

Q. And to report any major difficulties, I suppose, for repair? A. Yes, sir.

Q. Was Mr. Long a member of the Marine Engineers' Union?

A. I could not tell you that. I don't know.

Q. When the vessel was up in Ward's Cove, did she have a crew aboard?

A. There was a skeleton crew aboard of some nature at Ward's Cove. I would have to check the records but there was a skeleton crew of some nature aboard, because I know Mr. Long was one of them and I think there were probably on each, two or three on each vessel. That would be my guess at the time they were tied up.

Q. The Coastal Forest is in operating condition, is it? A. Yes, sir. [29]

Mr. Vance: I think that is all.

Cross-Examination

By Mr. Franklin:

Q. Mr. Link, the Coastal Glacier is a documented vessel? A. Yes.

Q. With the Customs, a department of the United States Government? A. Yes.

(Testimony of Allen H. Link.)

Q. And Mr. Long you say first joined the Coastal Glacier as Chief Engineer when?

A. On August, 1946.

Q. And had he remained attached to the vessel up until the time of his death?

A. Yes, up until the period he wanted to get off for vacation.

Q. Did he make several trips away from the vessel? A. Yes.

Q. Where did he live?

A. He lived aboard the Coastal Glacier or Forest but I think he was on the Coastal Glacier.

Q. He was paid a flat salary of \$250.00 a month?

A. Yes, sir.

Q. And in addition did he receive subsistence?

A. Yes, sir, by Coastal Navigation Company.

Q. Was he ever paid an hourly wage? [30]

A. No, sir.

Q. What was your purpose of continuing Mr. Long aboard the Coastal Glacier after the vessel returned from Alaska to the port of Lake Washington in March 23, 1947?

A. That was the Coastal Navigation's idea. At the time, we would see if there would be any possibility of disposing of the Coastal Forest. We had in our mind that we would like to dispose of the Coastal Forest. Besides that, we spent a good deal of Mr. Swanson's time; he is the manager of the Alaska Transportation Company, on the basis of chartering either boat and therefore we wanted to keep them up and ready to go at one day's notice.

(Testimony of Allen H. Link.)

Q. For that purpose was it necessary for a man who had the experience and rating of a Chief Engineer to be placed aboard the Coastal Glacier?

A. As far as our own operation and as far as Mr. Clapp's own personal use of the Coastal Glacier or Forest is concerned, we would not take out that vessel without an engineer aboard.

Q. Let me ask you this: Why is it you retained Mr. Long aboard the vessel, when the vessel reached Seattle, and did not get just any ordinary individual that you find around Kirkland?

A. With a vessel's valuation somewhere around forty or forty-five thousand dollars, you can't let a piece of equipment and machinery lie idle. We had to have a man capable of overhauling and handling the mechanical and other parts of the [31] vessel to keep it up.

Q. Did you feel that Mr. Long was capable of doing that kind of work you mention?

A. Yes.

Q. Now, Mr. Link, during the period from March 23, 1947, until Mr. Long's death on May 8, 1948, what effort was the Coastal Navigation Company making to put the Coastal Glacier in service during that period?

A. We have quite a file built up on the basis, one of the basis, of chartering the Coastal Glacier.

Q. Were you endeavoring during that period to obtain satisfactory charters for the vessel?

A. Yes.

Q. And what would have happened to the vessel?

(Testimony of Allen H. Link.)

A. We would have chartered her and I might also add the one basic requirement in chartering the vessel was we would be able to name our own engineer aboard, thinking entirely of the mechanical operation of the vessel.

Q. And if you had been successful in obtaining a charter during that period, who would you have named as engineer?

Mr. Vance: I object to any further inquiry along that specific line.

Mr. Franklin: I think it is competent to show the status of Mr. Long.

Mr. Vance: I think the testimony is specific, [32] particularly with reference to the officials of the Company.

Mr. O'Leary: I am desirous to get all the facts in connection with the case and therefore will allow the question.

A. I think I am a little confused. What was the question?

Q. (By Mr. Franklin): Had you obtained a charter during this period, who would you have named as engineer of the Coastal Glacier?

A. Mr. Long. That was the only requirement in submitting a charter.

Q. Mr. Link, since Mr. Long's death what has the Company found necessary in order to maintain the engines and equipment of the Coastal Glacier?

A. We have had to hire Mr. Nitson. I think he was our Port Engineer and he is available to us for any mechanical duties on an hourly basis and

(Testimony of Allen H. Link.)

he takes care of them, and, as a matter of fact, two weeks ago he did some work and does at regular intervals and goes over the vessel, turns over the main engines to keep them in good shape.

Q. Is Mr. Haas able to do those things?

A. No. He is hired as a caretaker; not as a mechanical man.

Q. Is he able to do those things?

A. Not as a mechanical man.

Mr. Franklin: That's all. [33]

Redirect Examination

By Mr. Vance:

Q. You say Mr. Long was paid \$250.00 a month?

A. Yes.

Q. Haas was paid the same?

A. \$250.00 a month. He has his living quarters aboard.

Q. Did Mr. Long have living quarters aboard the vessel? A. Yes.

Q. He cooked aboard the vessel?

A. We paid for the groceries and he cooked aboard.

Q. You paid for the groceries? A. Yes.

Q. Mr. Link, you say you have been in the transportation business for sometime?

A. I am really not a transportation man, sir, but I have been connected with Mr. Clapp, and I would not want to call it a transportation man because I am not.

(Testimony of Allen H. Link.)

Q. Well, there are moorages, personally operated, where you can moor vessels like these and have them looked after and cared for?

A. Yes, sir.

Q. Does the Company ever investigate the possibility of putting these vessels into such a moorage as that? A. Yes, sir.

Q. But it is more economical to have those vessels—— [34]

A. Not more economical but we thought it was the best thing to do.

Q. Now, Mr. Long looked after the mechanical condition of both vessels, did he, the Coastal Glacier and the Coastal Forest? A. Yes, sir.

Q. Had Mr. Long been employed by your Company prior to his service on the Glacier?

A. No, sir. He was hired in Alaska.

Q. The Coastal Navigation Company did not purchase any other vessel? A. No, sir.

Q. Neither of these vessels has ever been decommissioned?

Mr. Franklin: What do you mean by decommissioned?

Mr. Vance: Perhaps to clarify it——

Witness: Maybe I could answer that.

At the time the vessels were brought down from Ketchikan they of course were registered or documented to take care of combination passenger and freight vessels. At the time we brought them down here, for tax purposes, we documented or registered them as yachts.

Q. (By Mr. Vance): So far as you are able to

(Testimony of Allen H. Link.)

determine, of your own knowledge, all the laws have been complied with by the Company so that it was legal at all times to operate the vessels [35] at all times? A. Yes, sir.

Q. Since they were brought from Alaska there has never been a time when you did not comply with the laws so that it would be legal to operate the vessels?

A. No, there has never been a time.

Mr. Vance: That's all.

Mr. Franklin: That's all.

Deputy Commissioner: I am curious to learn why Mr. Long was furnished subsistence, whereas Mr. Haas was not furnished subsistence. Could you give any reason for that?

A. The only reason I know of—I did not hire Mr. Haas. There are two or three memorandums in the file here from Mr. Clapp—to try to locate another man of Mr. Long's ability to take over the job after he had passed away; and we were unsuccessful in locating a man, who had that engineering ability and still would like to live aboard the vessel seven days a week, and stay there, so that we hired the next best we could and without the engineering ability and possibly because of that lack, maybe the arrangements of not furnishing subsistence, maybe that was the reason for it. Haas was hired, as I remember it, on a basis of \$250.00 a month and his living quarters on the boat. The matter of the other items was not discussed. That is the best way I can answer it. [36]

(Testimony of Allen H. Link.)

Q. (By Mr. Vance): Did I understand you to say the differential was because Mr. Long was Chief Engineer and could perform those duties?

A. That is the deduction; that is only a deduction on my part, that it would be the only reason for the difference in the pay, or the amount he would have net to him.

(Witness excused.) [37-A]

Mr. Vance: That is the claimant's case.

Mr. Franklin: Carrier and employer would like to offer a certified copy of death certificate of the decedent.

Mr. Vance: No objection.

Deputy Commissioner: Official copy of the death certificate, filed in connection with the death of Francis Louis Long, will be received in evidence and marked Carrier's Exhibit 1.

DEPARTMENT OF PUBLIC HEALTH

OFFICE OF THE DIRECTOR OF PUBLIC HEALTH
AND REGISTRAR OF VITAL STATISTICS

CERTIFIED COPY OF DEATH CERTIFICATE

PLACE OF DEATH

County of King.
City of Seattle

Volume No. 1948

2016

Register No. _____

1. PLACE OF DEATH: **King**
(a) County
(b) City or town **Seattle**
(If outside city or town limits, write RURAL.)
(c) Name of hospital or institution:
U. S. Marine Hospital, Seattle, Wash.
(If not to hospital or institution write street number or location)
(d) Length of stay: In hospital or institution **3 days**
(Specify whether
In this community (Years, months or days) **1 year**

2. USUAL RESIDENCE OF DECEASED:
(a) State **Minnesota** (b) County _____
(c) City or town **Park Rapids**
(If outside city or town limits, write RURAL.)
(d) Street No. _____
(If rural give location)
(e) If foreign born, how long in U. S. A. _____ years

3. (a) FULL NAME **FRANK LOUIS LONG**

3. (c) Social Security Number _____

3. (b) Was decedent ever a member of the Army, Navy or Marine Corps of the United States? _____ Name of organization in which such service was rendered _____ Period of service _____

4. Sex **male** 5. Color or race **white** 6(a) Single, widowed, married, divorced **married**

6. (b) Name of husband or wife **Genevieve M. Thompson** 6(c) Age of husband or wife if alive _____ years

7. Birth date of deceased **Oct. 22, 1885**
(Month) (Day) (Year)

8. AGE: Years **62** Months **6** Days **15** If less than one day _____ hr. _____ min.

9. Birthplace **Greely, Iowa**
(City, town or county) (State or foreign country)

10. Usual occupation **Chief Engineer**

11. Industry or business **Shipping**

12. Name **Simon L. Long**

13. Birthplace **Germany**
(City, town, or county) (State or foreign country)

14. Maiden name **Marion Sutter**

15. Birthplace **Iowa**
(City, town, or county) (State or foreign country)

16. (a) Informant's own signature **Hospital Records**

(b) Address **U. S. Marine Hospital, Seattle**

17. (a) **Removal** (b) Date thereof **5/8/48**
(Burial, cremation, or removal) (Month) (Day) (Year)

(c) Place: burial or cremation **Spirit Lake, Iowa**

Columbia Funeral Home

18. (a) Signature of funeral director **W. F. Lewis**

(b) Address **Seattle, Wash.**

19. **May 8, 1948** **Emil E. Palmquist**
(Date received local registrar) (Registrar's signature)

MEDICAL CERTIFICATION

20. Date of death: Month **May** day **7**
year **1948** hour **10:20** minute **P.M.**

21. I hereby certify that I attended the deceased from **May 4**, 19**48**, to **May 7**, 19**48**, that I last saw him alive on **May 7**, 19**48**, and that death occurred on the date and hour stated above.

Immediate cause of death **Acute dilatation of stomach and intestine**

Due to **Strangulated inguinal hernia**

Due to _____

Other conditions **atelectasis and pulmonary edema**
(Include pregnancy within 3 months of death)

Major findings: **Strangulated hernia**

Of operations **same as above**

Of autopsy _____

22. If death was due to external causes, fill in the following:

(a) Accident, suicide, or homicide (specify) _____

(b) Date of occurrence _____

(c) Where did injury occur? _____

(d) Did injury occur in or about home, on farm, in industrial place, in public place? _____

While at work? _____ (Specify type of place)

Signature **G. E. Tooley** (M. D. or other) **M.D.**

Address **U. S. Marine Hosp.** Date signed **5/8/48**

I HEREBY CERTIFY, That the foregoing is a true, full and correct copy of the certificate of death of

FRANK LOUIS LONG

on file in this office.

Emil E. Palmquist
Registrar, City of Seattle.

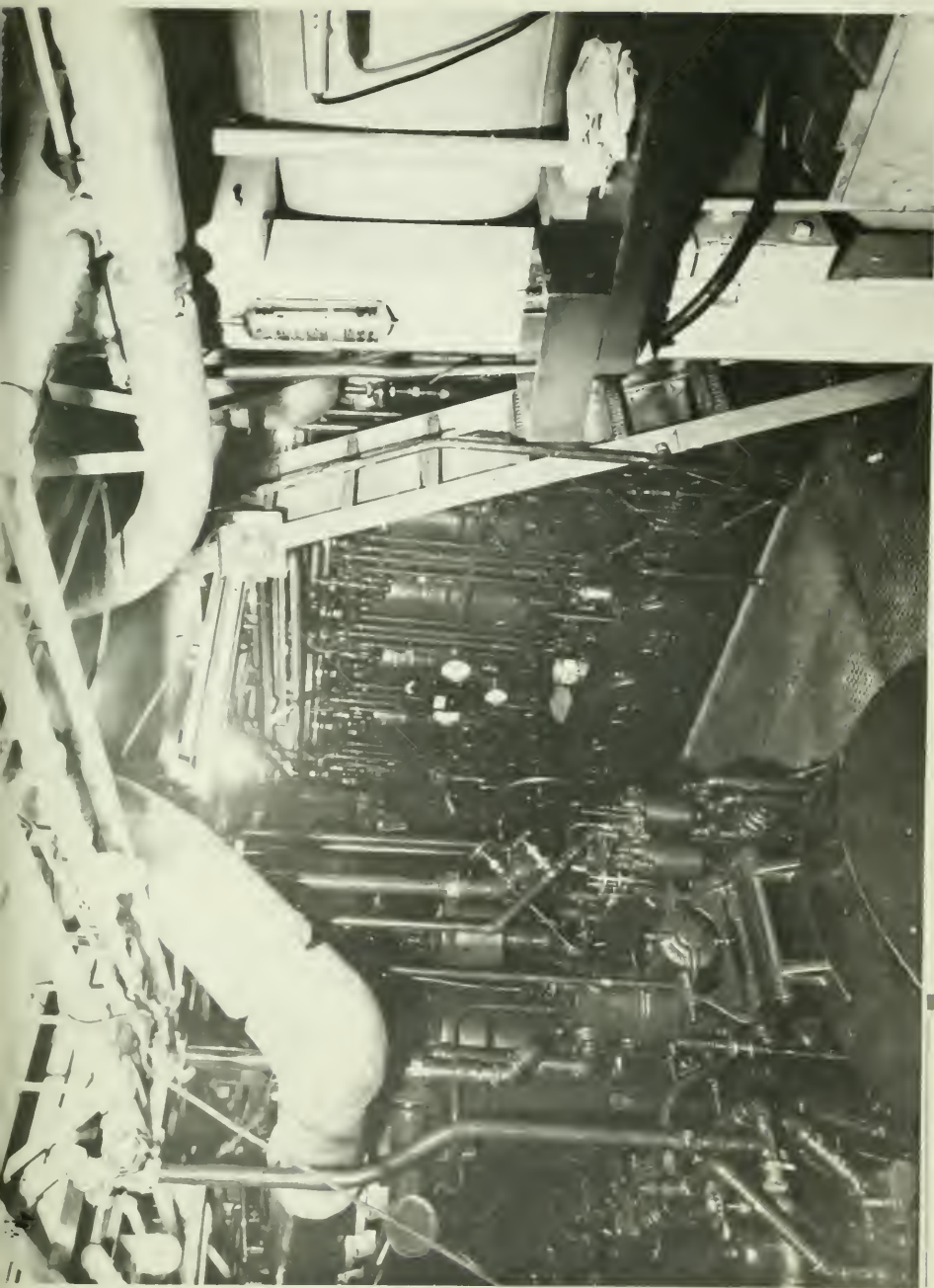
By **W. F. Lewis**
Seattle, Wash. **Aug. 3**, 19**48**

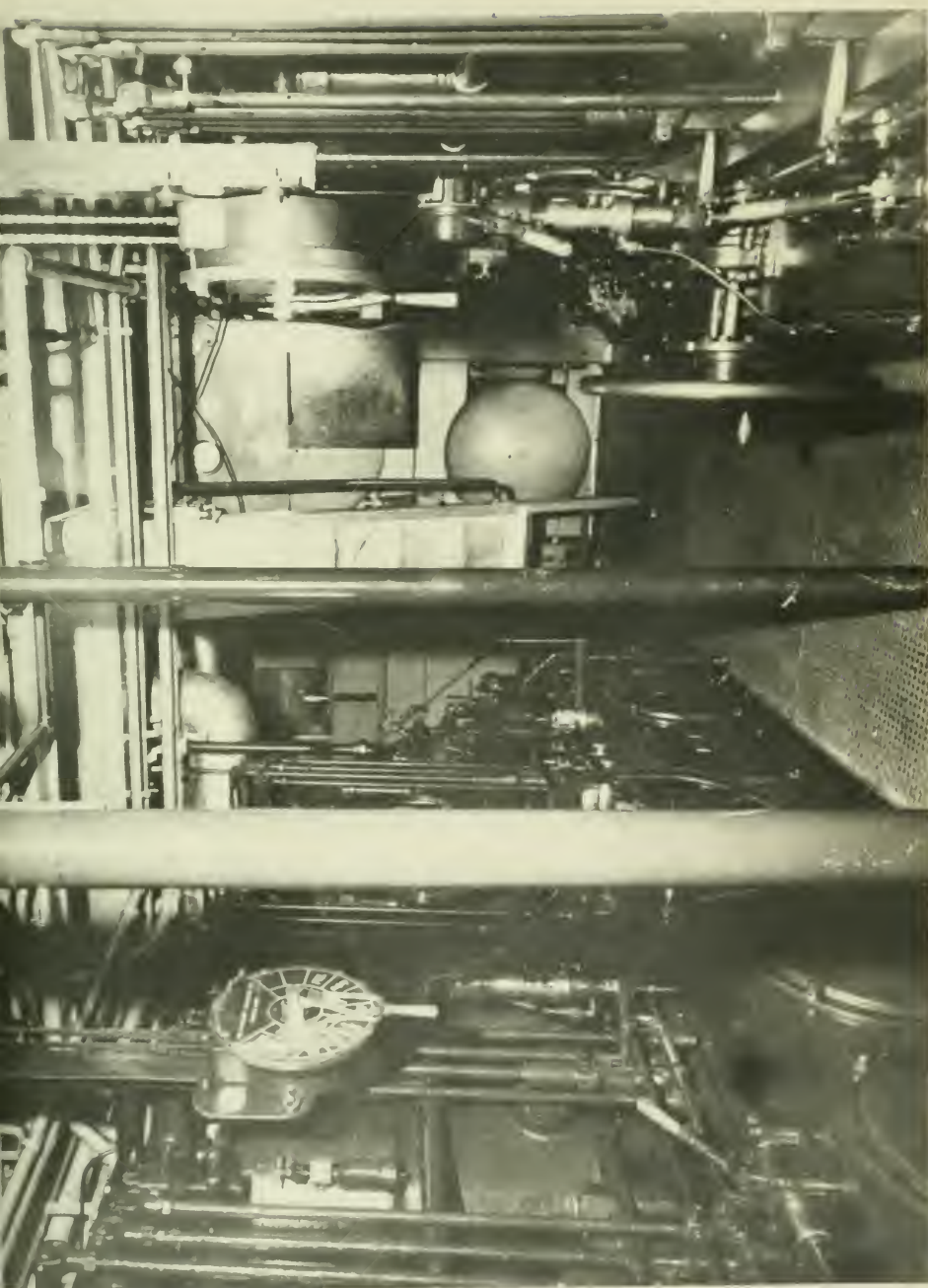
(Testimony of Allen H. Link.)

Mr. Franklin: Carrier would like to introduce in evidence two photographs showing the engine-room of the "Coastal Glacier," which were taken August 3, 1948. May we mark both of these as one exhibit?

Mr. Vance: No objection.

Deputy Commissioner: The two photographs just referred to will be received in evidence and will be marked Carrier's Exhibits 2 and 3.





Mr. Franklin: Carrier rests.

Mr. Vance: I have a memorandum, Mr. O'Leary, I would like to hand you at this time. I wonder if it would expedite matters if we read into the record the clinical portion of the record that would concern it?

Deputy Commissioner: I think that might be the best way to handle the record of the U. S. Marine Hospital; so if you will be good enough to read that portion, you may do so. [37-B]

Mr. Vance: I am reading from clinical record, Claimant's Exhibit 1, as follows:

"U. S. Marine Hospital, Seattle, Wash. Register No. 51-020. Surname of patient: Long, Frank Louis; Class of beneficiary A. S. Occupation: Chief Engineer; Permanent address: Park Rapids, Minnesota. Name of nearest relative or friend: Genevive M. Long. Address of nearest relative or friend: Same. Age of patient: 63. Date of birth: 22 Oct., 1885. Sex: Male. Race: White. Nativity: Greely, Iowa. Religion: Prot. Length of time in this city: 1 year. Legal residence: Minnesota. Marital state: Married. Husband (or wife) Genevieve M. Thompson. Father's name: Simon L. Long. Mother's maiden name: Marion Sutter. Father's birthplace: Germany. Mother's birthplace: Iowa. Source: S.S. Coastal Glacier. Date of last service: Oct. 1945 to 5-4-48. Authority: Par. 32.14. Date and hour admitted: 9:45 p.m.—4 May '48. Condition on arrival: Wheelchair. Arrived by ambulance. Bilateral hernia

Rt. incarcerated hernia. Ward assigned: 6.

“L. MEADE, Med. Int.,
Admitting Officer.

“Diagnosis: 650-514 strangulation of ileum due to hernia. 650.415.8 Ilens, paralytic, following operation. 640-415.6 Dilatation, acute, of stomach. 0601-639.3 Hernia, inherent, right. Date of diagnosis 5/4/48.”

Mr. Vance: Then there are some notes here [38] which are immaterial. (Continuing to quote.)

“Signed T. S. McGowan, Surgeon.

“Disposition: Expired 10:20 p.m. Condition on Disposition: Expired. Date of disposition: 5/7/8. Autopsy: Yes. (Signed) Geo. Cooper, Ward Surgeon.”

Mr. Vance: I am omitting page 2 and reading from page 3:

“History of Present Disease:

“Chief Complaint (in patient's own words): (1)-Acute abdominal pain; (2) Vomiting—severe, unable to retain water; (3) Absolute constipation.

“Probable cause, date, and mode of onset of disease. Date and cause of injury. Evolution and course of admission. Subjective symptoms:—

“Patient enters hospital with history of slipping on the deck and wrenching himself with immediate severe pain in the right lower quan-

drant. Patient also became aware of a mass in this region. The abdominal pain was severe with attacks of violent colic. The patient began to vomit and was unable to retain even water. The onset of this episode was 5-2-48. Patient reached U. S. Marine Hospital on 5-4-48 with the symptoms becoming progressively more severe.

Surname of patient: Long, Frank L.—MS
51-020 (Reg. No.)

“/s/ J.F. LOWNEY, M.F.
“Surgeon.”

Mr. Vance: I am omitting from page 4 and page 5 and page 6 and am reading from page 7: [39]
“Ward Surgeon’s Progress and Treatment Record.

“Ward surgeon will record on this sheet the diet, treatment, complications, changes of diagnosis, intercurrent diseases, and daily progress of the case, and will initial each notation.”

Mr. Vance: On the lefthand side of the page is a column for the date, 5/4/48; under “Treatment” and “Daily Notes” the following:

“Pt. slipped and fell but checked his fall with right hand and developed a rt. inguinal strangulated hernia. He has not been able to pass B.M.’s or gas since the accident. He vomits everything he eats—6-8 times yesterday and same today.”

Mr. Vance: I am omitting the rest of that page. Omitting page 8, page 9, page 10, all being merely routine notes.

Mr. Franklin: I will stipulate the record will show he died under the operation.

Mr. Vance: No, I am afraid that would not do—— (Continuing.)

Page 11 is a typewritten document. (Quotes.)

“Discharge Summary—Date May 7, 1948:

“This 63-year-old merchant seaman was admitted May 4, 1948, complaining of acute abdominal pain, vomiting and constipation. He stated on admission that he slept”—and I [40] assume that to be a typographical error—— (Continuing.)

“on the deck of the ship, twisting himself, producing immediate pain in the right lower quadrant. He also became aware of a mass in this region. Abdominal pain seemed followed with attacks of violent colic. This had been present for two days prior to admission.”

Mr. Vance: There are three paragraphs following that.

“/s/ GEO. COOPER, SR.

“Ass't Surgeon.”

Mr. Vance: Omitting page 12, history of treatment, omitting page 13, omitting page 14, omitting page 15, urine examination; omitting page 16, urine examination; omitting page 17, which is a record of the operation of the hernia. Quoting page 18, Post-Mortem Record, but omitting the formal parts of the record:

“Final Diagnosis: Primary cause of death: Strangulation of a segment of upper ileum in a right inguinal hernia.

“Contributory Factors: (1) Extensive ileus of small bowel. (2) Acute dilatation of the stomach. (3) Marked elevation of the diaphragm due to abdominal distention. (4) Partial atelectasis, both lower lobes. (5) Pulmonary edema and congestion. (6) Aspiration of stomach contents. (7) Passive congestion of viscera.

“/s/ G. E. TOOLEY,

“Surgeon, U.S. Public Health Service.”

Mr. Vance: I am omitting pages 19 and 20, [41] which are clinical abstracts.

Mr. Franklin: The carrier and employer desires to introduce the following statement from the hospital record: Page 2: The occupation of decedent is merchant seaman. Page 4: “Patient is a well-nourished, 63-year-old merchant seaman.” Page 11: “Discharge summary: 63-year-old merchant seaman.” That is all the carrier desires to read from the hospital record.

Deputy Commissioner: At this point I would like to ask whether there is any question as to the status of the widow in this case.

Mr. Franklin: The carrier is not denying the fact that the deceased left a surviving widow, whom I believe is Genevieve Long.

Deputy Commissioner: Is there any question about the payment of burial expenses in this case? I note Mrs. Long claims burial expense of \$725.88 and that she paid the full amount of the burial expense. Any question on that point, Mr. Franklin?

Mr. Franklin: No question on that.

Deputy Commissioner: Does either side have anything further to offer at this time?

Mr. Vance: I have nothing further to offer on the record.

Mr. Franklin: I would like to have the [42] decision held up until I can submit a brief, if that is what you wish, Mr. O'Leary, because it will probably only be a week's time.

Deputy Commissioner: Counsel for claimant has submitted a memorandum and if you so desire, you may submit a brief and decision will be reserved until I have had time to consider all the facts in connection with this case.

Mr. Vance: I wonder if you would ask any questions of either counsel either on or off the record at this time?

Deputy Commissioner: No. I have no questions at this time. I think the record will speak for itself. Both sides rest?

Mr. Vance: Yes.

Mr. Franklin: Yes.

Deputy Commissioner: The hearing is concluded and decision is reserved.

(Whereupon the hearing, which convened at 9:30 a.m., adjourned at 11:15 a.m., April 27, 1950.) [43]

Certificate

State of Washington,
County of King—ss.

I, James Trail, do hereby certify that I am a

regularly qualified and acting Court Reporter in the State of Washington and that as such Reporter, I reported in shorthand the above-entitled cause, and that thereafter the case was transcribed by myself; that the within and foregoing is a true and correct transcript of the stenographic notes taken by me during the hearing in the above-entitled cause.

Dated this ninth day of May, 1950.

/s/ JAMES TRAIL.

Receipt of Copy acknowledged.

[Endorsed]: Filed February 7, 1951.

[Title of District Court and Cause.]

CERTIFICATE OF CLERK U. S. DISTRICT
COURT TO RECORD ON APPEAL

United States of America,
Western District of Washington—ss.

I, Millard P. Thomas, Clerk of the United States District Court for the Western District of Washington, do hereby certify that pursuant to the provisions of Subdivision 1 of Rule 11 as Amended of the United States Court of Appeals for the Ninth Circuit, and Rule 75(o) of the Federal Rules of Civil Procedure, I am transmitting herewith all the original papers in the file dealing with the above-entitled action, and that the same constitute the complete record on file in said cause. The papers herewith transmitted constitute the record on appeal from the orders filed January 30, 1951, and February 15, 1951, and each thereof, to the United

States Court of Appeals at San Francisco, California, and are identified as follows:

1. Petition for injunction, filed June 28, 1950.

2. Praecipe for summons, filed June 28, 1950.

3. Marshal's Return on Summons, filed July 6, 1950.

4. Appearance of U. S. Attorney for defendant, filed July 19, 1950.

5. Defendant O'Leary's Motion to Dismiss Petition, filed 10/11/50.

6. Memorandum of Points and Authorities in support of Defendant O'Leary's Motion to Dismiss Complaint, filed Oct. 11, 1950.

7. Motion of United States to Dismiss, filed Dec. 21, 1950.

8. Plaintiff's Memorandum, filed Jan. 5, 1951.

9. Memorandum of Claimant in Support of Motion to Dismiss, filed Jan. 8, 1951.

10. Memorandum and Order denying Motion to Dismiss, filed January 30, 1951.

11. Motion of Genevieve Long to Intervene, filed Feb. 6, 1951.

12. Notice of Hearing Motion to Intervene, filed Feb. 6, 1951.

13. Order Granting Leave to Intervene, filed Feb. 6, 1951. (Intervenor's Exhibit 1 attached.)

14. Answer of Intervenor to Petition for Injunction, filed 2/6/51.

15. Motion of Intervenor to Remand for

Taking of Additional Testimony, filed Feb. 6, 1951.

16. Transcript of Testimony at hearing before J. J. O'Leary. Deputy Commissioner, filed Feb. 7, 1951.

17. Memorandum and Order, filed Feb. 15, 1951.

18. Unsigned Order Denying Motion for Dismissal and Granting Injunction, lodged Feb. 15, 1951.

19. Unsigned Findings of Fact and Conclusions of Law, Lodged 2/15/51.

20. Exceptions to Proposed Findings of Fact and Conclusion of Law and Decree, Filed Feb. 15, 1951.

21. Notice of Appeal of defendant, filed Mar. 23, 1951.

I further certify that the following is a true and correct statement of all expenses, costs, fees and charges incurred in my office for preparation of the record on appeal herein on behalf of defendant, to wit:

Notice of Appeal \$5.00, and that this amount has not been paid to me for the reason that the appeal is being prosecuted by the United States of America.

In Witness Whereof I have hereunto set my hand and affixed the official seal of said District Court at Seattle, this 26th day of April, 1951.

[Seal]

MILLARD P. THOMAS,
Clerk.

By /s/ TRUMAN EGGER,
Chief Deputy.

[Endorsed]: No. 12915. United States Court of Appeals for the Ninth Circuit. J. J. O'Leary, Deputy Commissioner, Fourteenth Compensation District, under the Longshoremen's & Harbor Workers' Compensation Act, Appellant, vs. Coastal Navigation Company, a corporation, Fireman's Fund Insurance Company, a corporation and Mrs. Genevieve Long, Appellee. Transcript of Record. Appeal from the United States District Court for the Western District of Washington, Northern Division.

Filed April 30, 1951.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Court of Appeals for
the Ninth Circuit.

In the United States Court of Appeals for the
Ninth Circuit

No. 12915

J. J. O'LEARY, Deputy Commissioner, Fourteenth
Compensation District, Under the Longshore-
men's & Harbor Workers' Compensation Act.
Appellant.

vs.

COASTAL NAVIGATION COMPANY, a Corpo-
ration, and FIREMAN'S FUND INSUR-
ANCE COMPANY, a Corporation,
Appellees,

STATEMENT OF THE POINTS ON WHICH
APPELLANT RELIES AND DESIGNA-
TION OF THE PARTS OF THE RECORD
NECESSARY FOR THE CONSIDERATION
THEREOF

The trial court erred in holding that there was no evidence to support the finding of the Commissioner that the decedent was not a member of the crew of the vessel.

The entire record is necessary for the consideration of this appeal.

/s/ J. CHARLES DENNIS,
United States Attorney.

[Endorsed]: Filed May 17, 1951.

[Title of District Court and Cause.]

DESIGNATION OF RECORD ON APPEAL

To the Clerk of the Above-Entitled Court:

The defendant designates the entire record herein as being necessary to the appeal and requests that all parts thereof be prepared for transmittal to the Clerk of the Court of Appeals, and further requests that all original exhibits be transmitted to said Clerk of the Court of Appeals together with said record.

/s/ J. CHARLES DENNIS,
United States Attorney.

Receipt of Copy acknowledged.

[Endorsed]: Filed May 17, 1951, U. S. District Court.

[Title of District Court and Cause.]

CERTIFICATE OF CLERK U. S. DISTRICT COURT TO SUPPLEMENTAL RECORD ON APPEAL

United States of America,
Western District of Washington—ss.

I, Millard P. Thomas, Clerk of the United States District Court for the Western District of Washington, do hereby certify that pursuant to the provisions of Subdivision 1 of Rule 11 as Amended of the United States Court of Appeals for the Ninth Circuit, and Rule 75(o) of the Federal Rules of

Civil Procedure, I am transmitting herewith, supplemental to the record heretofore forwarded in this cause, as part of the record on appeal, the following original paper:

22. Designation of Defendant of Record on Appeal, filed May 17, 1951.

Witness my hand and official seal at Seattle, this 17th day of May, 1951.

[Seal]

MILLARD P. THOMAS,
Clerk.

By /s/ TRUMAN EGGER,
Chief Deputy.

